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**Labor & Workplace Standards  
Committee**

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**HB 2226**

**Brief Description:** Concerning collecting data on the H-2A worker program and from certain hand harvesters.

**Sponsors:** Representatives Ortiz-Self, Berry, Gregerson, Ramel, Santos, Reeves, Reed and Davis.

**Brief Summary of Bill**

- Requires the Employment Security Department to collect certain data about H-2A workers when conducting field checks and field visits.
- Requires the Office of Agricultural and Seasonal Workforce Services to conduct annual wage surveys of workers hand harvesting apples, cherries, pears, and blueberries.

**Hearing Date:** 1/17/24

**Staff:** Trudes Tango (786-7384).

**Background:**

H-2A Temporary Agricultural Worker Visa Program.

The federal H-2A program allows agricultural employers to hire foreign workers on temporary guest worker visas when there are insufficient qualified domestic farmworkers available and the use of H-2A workers would not have a negative effect on the wages or working conditions of domestic farmworkers. Although the United States Department of Labor (DOL) establishes the rules for the federal program, the state Employment Security Department (ESD) is charged with administering certain aspects of the program.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Employers seeking to use the H-2A program must first submit a job order to the ESD. The job order includes the number of workers requested and other information, such as the wages the employer will pay. The ESD confirms that the job order meets federal requirements and notifies the DOL. The ESD also engages in recruitment efforts to find domestic farmworkers, using the state's WorkSource offices. The ESD refers domestic applicants to the employer, and the employer is required to hire all qualified, able, willing, and available domestic farmworkers. Employers also engage in direct recruitment of domestic farmworkers as well.

The employer next submits an application to the DOL for certification to use temporary guest workers. The application may be submitted by a single employer or a group of employers that will jointly employ the workers. The DOL must determine that there are not enough domestic farmworkers to fill the employer's positions. The DOL then certifies the employment of H-2A workers. Employers using H-2A workers must pay specified rates of pay, provide the workers housing and transportation, and meet other requirements. The DOL establishes what the prevailing wage rate for H-2A workers should be. The ESD conducts wage surveys of employers and some farmworkers, subject to federal H-2A regulations. Participation in the surveys are voluntary.

The ESD also conducts field visits, which are scheduled in advance, to help employers and H-2A farmworkers understand their rights and responsibilities and to observe working and living conditions. The ESD also conducts field checks, which are random and unannounced, to ensure compliance with H-2A requirements.

#### Office of Agricultural and Seasonal Workforce Services.

The Office of Agricultural and Seasonal Workforce Services (ASWS Office) was created within the ESD to, among other things, process and adjudicate foreign labor certification applications from employers, conduct field checks and field visits and conduct training and outreach activities to employers using the H-2A program. The ESD Commissioner appointed an advisory committee (Advisory Committee) within the ASWS Office to review issues related to the H-2A program. The Advisory Committee consists of members representing agricultural workers and employers.

#### **Summary of Bill:**

##### Data on H-2A Workers.

Whenever the ESD conducts field checks or field visits of an employer, the ESD must collect the following information:

- the number of H-2A workers the employer has at each work site; and
- the actual geographic location of where the H-2A workers are living during their employment with the employer.

The ESD must compile the information and compare the number of workers sought by an employer on the employer's H-2A application with the number of H-2A workers actually

working for the employer. The ESD must make the information available to the Advisory Committee on a quarterly basis.

#### Surveys of Hand Harvesters.

The ASWS Office must conduct a comprehensive annual wage survey of workers hand harvesting apples, cherries, pears, and blueberries. At a minimum, the survey must:

- gather information on wage rates received for harvesting activities;
- gather information on the respondent's age, gender, and whether the respondent was born in the United States or the number of years the respondent has been living in the United States; and
- include a question concerning whether the respondent made an unemployment insurance claim in the survey period.

The ASWS Office must use a phone survey designed to receive responses from a minimum of 850 total fruit harvesters. Beginning fiscal year 2024, the ASWS Office must include field surveys designed to receive responses from a minimum of:

- 1,200 apple harvesters;
- 200 pear harvesters; and
- 200 blueberry harvesters.

Beginning fiscal year 2025, the ASWS Office must include a field survey of cherry harvesters designed to receive responses from a minimum of 350 cherry harvesters.

The ASWS Office must provide \$25 incentive payments for survey respondents eligible to respond to the survey.

The ASWS Office must submit a report to the appropriate committees of the Legislature every year by May 1st. The report must include information about the number of responses and individual responses, without names, by age, gender, United States birth or number of years in the United States; and whether the respondent filed an unemployment insurance claim.

**Appropriation:** None.

**Fiscal Note:** Requested on January 16, 2024.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.